1944

File No. B. Land Improvement/44

Legal Department

B **BRANCH**

Subject:-

Bill to amend the Bombay Land Improvement Scheme Act, 1942

(Bom III of 1944)

E
page 14
1944

File No. B. Land Improvement/44

Gen. 194 e.

311-B

Office of the R.L.A.

The provisions proposed to be made in draft section 12B sent by R.D. are incomplete in several respects, and will be of little practical value in the absence of the relevant provisions of the Cattle-trespass Act such as section 15, the owner appearing but refusing to pay the fines and expenses, section 16 procedure where the owner refuses or omits to pay the fine, section 17 disposal of fines and surplus proceeds of sales, section 20-23 complaints of illegal seizure or detention and also sections 27-30 penalty on pound - keeper failing to perform his duties, application of fines or suits for compensation. It is necessary, therefore, to amplify the draft further to provide that on the seizure of goats and their being sent to pound, the provisions of the cattle-trespass Act, 1871, shall, so far as may be practicable apply in respect of any such goat subject to certain modifications. These modifications appear to be-

(i) under section 14 the poind-keeper to make a report forthwith on the receipt of the goats (and not after 7 days if they do not claimed within that time) and their sale if unclaimed within 2 days (instead of 7 days),

(ii) under sections 20- and 24 reference to seizure in contravention of the Cattle-trespass Act to be construed as reference to seizure under the new section.

(iii) under section 24, the penalty to be simple imprisonment and fine Rs.50/-(instead of Rs.500/- or imprisonment(of either Kind) not exceeding 6 months) and forfeiture of goats.

It is also presumed that R.D. does not want simple imprisonment for an indefinite period. Sections 10 and 11 the Cattle- trespass Act provide for animals being sent to a pound within 24 hours of their seizure. It is presumed this is to be followed under the new section.

2. Apart from the incompleteness of the provisions, the draft section 12-B sent by the R.D., which is presumbly based on the provisions of the Cattle - Trespass Act, 1871, seems open to more cogent objections. Sub section (1) of section 12-B provides that no person shall keep goats or being or cause them to be brought within a certain area. Sub-section (2) provides that goats in the said area may be seized and may sent to the nearest pound established under section 4 of the Cattle-trespass Act, 1871, Then the latter part of sub-section (3) provides that if the goats be not claimed within 2 days from the date of seizure, they shall be sold by public auction by the

P.T.O.

officer appointed by the District Magistrate or an officer of his establishment deputed for the purpose at such place and time and subject to such conditions as the Magistrate of the district by general or special order from time to time directs. Under section 4 of the Cattle-trespass Act, 1871, pounds shall be established at such places as the Magistrate of the District from time to time directs. The village by which every pound is to be used shall also be determined by the Magistrate of the District. Unless, therefore, the pounds established under section 4 of the Cattle-trespass Act, 1871, and the places at which the goats are auctioned are outside the prohibited areas, under the proposed section12B, any purchaser of the goats at such auction sale would be contravening the principal provision made in section 12B viz. prohibition against the keeping of goats. Further, the provision made in sub-section (3) of section 12B does not provide for the case where the goats are claimed within the period by the owner. Under section 13 of the Cattle-trespass Act,1871, in such a case the cattle are delivered to the owner or his agent. Presumably, it is not intended that the goats under the present scheme should be returned to the owner, if claimed within the period of 2days, for thereby he would still contravene the principal provision made in sub-section (1), viz., prohibition against the keeping of goats in the said area. It would appear simpler and more effective to provide instead, on the lines of x sections3, 4(e), 6, 7, 14, 15, 18, 19 and 20 of the Punjab Land Preservation (Chos) Act, 1900(Pb. Act II of 1900), read with sections 52, 54, 55, 57, 59, 60, 64, 65 and 67 of the Indian Forest Act, 1927 (VI of 1927), with suitable modifications; and particularly to provide for the forfeiture of any goats found in the prohibited area, in addition to the penalty to be provided on the lines of section 19 of the Punjab Act.

3. The R.D. is therefore requested to consider whether it would not be more convenient to have a separate chapter to provide for clearing specified areas of goats on the lines of the Punjab Land Preservation (Chos) Act, 1900, and to settle what provisions of the Indian Forest Act, 1927 and the Cattle-trespass Act, 1871, should be adopted and with what alterations to suit the present scheme. R.D. may also clearly indicate whether it is proposed to leave contraventions of any other schemes under the Act to be remedied by civil reliefs alone(as in the case of the Town Planning Act Schemes) or whether on the lines of

section 19 of the Punjab Act, the proposed section 14B(1) is intended to provide the addition of penal sanction in respect of all schemes under the Act generally, i.e. whether or not they pertain to clearing areas of goats.

Id/- P.N.E.
13/9.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6153, dated 14th September 1943.

4-Cs.

M.V.V.
13/7.

'rice of the R.L.A.

The Bill and the Statement are referred to the R.L.A. under rule 25 of the Rules of Business. Presumably, rule 25 is a mistake for Instruction 25 of the Instructions made under rule 15 of the Rules of Business. Since, however, the R.D. has not followed the provedure laid down in sec. G.'s Circular No. 12/1, dated 10th May 1937 and P. & S. D. Circular No. 996 dated 3rd September 1938 and Sec. G.'s Circular No. 201(41) dated 30th Septmeber 1941, nor submitted the papers to His Excellency the Governor through all the Advisers, it is presumed that the papers have been referred to the R.L.A. at this stage under the proviso to Instruction 24 as to the necessity or expendancy from the legal point of view of the proposed legislation. The Bill has not, therefore, been revised from the drafting point of view, and the following observations are made as to the expediency of the proposed provisions.

2. The suggested amendments referred to in A(F)'s note on page 1 ant are not among the papers. The basis of the proposed provisions is therefore wanting. Nor were the other files pertaining to the subject sent along with the reference. It is presumed, however, that the R.L.A.'s remarks are requested on the draft provisions at pp.19-25 ante.

3. Clause 2 at page 19.- Consolidation of holdings is a subject fraught with far-reaching consequences and several improtant provisions would have to be made to give effect to the consolidation of holdings. Attention in this connection is invited to the detailed provisions made in Part II of Bill No. XVI of 1927 published at page 41 of B.G.G. Part V (The Bom.Small Holding Bill) and/a majority of these provisions will have to be incorporated if consolidation of holdings is to be achieved. Since such consolidation will affect the rights in land it will also attract the operation of section 299 of the Government of India Act, 1935, and provisions will have to be made in the Bill itself for the payment of compensation for the property acquired from those who are disposed of their holdings and either for fixing the amount of compensation or specify-ing the principles on which, and the manner in which, it is to be determined a

P.T.O.

the principles on which, and the manner in which, it is to be determined as required by sub-section (2) of the said section. Attention of R.D. is also invited to para 1 of Secy. R.D. Mr. Iyengar's note on page 62 of R.D. file No. 1884/39-III where the Government decided that the fragmentation question should be taken up separately. The R.L.A. would, therefore, advise the omission of this clause. Secretary, R.D. is requested to take the orders of Government whether consolidation of holdings should be provided for at the present time, and if so to consider the insertion of provisions on the lines of Part II of Bill No.XVI of 1927.

Clauses 3 and 4 new sections 10A and 12A.- The regulations proposed to be made under new section 10A require the public or any person to take action or refrain from doing certain acts in respect of any of the matters mentioned in section 4(1). Section 4(1) provides for the matters for which a scheme may make provisions. It will thus be seen that the regulations will be nothing more than the provisions made in the scheme. It may be pointed out that under the Punjab Land Preservation (Chos) Act, 1900 sections 4 and 5 provide for the making of regulations and not schemes and therefore section 19 of that Act provides for a contravention of a regulation made under those sections. In our Act, a regulation would be nothing but the provisions in a scheme. It is not necessary, therefore, to provide for the making of regulations. However, the penalty of a fine can be provided for in respect of a contravention of any provision of a scheme by a suitable amendment. Since however the cost of any work carried out by Government agency can be recovered from the defaulting owners under section 11(4) and the cost of maintaining or repairing any work carried out by Government can be recovered from defaulting owners under section 14(3), it is for consideration whether it is necessary to impose the puhishment of imprisonment in addition to fine.

4. Clause 6, new section 25B.- The transaction provided for in this section is an advance of a loan for carrying out the works under a scheme and the recovery of such advance from the owners who benefit thereby. The proposal to call any instalment in such recovery as a cess is misconceived. It does not constitute any revenue to Govt. nor is it covered by any taxation entry in the Provincial Legislative List. It is not necessary to call such recovery by the name of a cess. Provision can be made for the recovery of the proportionate cost involved in carrying out any work from the defaulting owners.....

ing owners of the lands included in the scheme in specified annual equated instalments payable on specified dates and recoverable, if in arrears, as arrears of land revenue.

Sd/- P.N.M.
26/10.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 7182, dated the 27th October 1943.

4-Cs./M.V.V./13.7

Office of the R.L.A.

Revised drafts of Bill and Statement are sent herewith,

2. Clause 2: section 10A.- With regard to A in para 2 of Secretary, R.D.'s note at page 51 ante, it may be observed that the R.L.A's comments on clauses 3 and 4 were not beside the point. It is true, it is possible to take power to the Board to make regulations, but as already observed in R.L.A's note dated 8th November at page 52 ante the regulations must be restricted to any matters supplementary and incidental to a scheme and must not traverse beyond it. R.D. still appears to be under a misapprehension as to the scope of these regulations. It is stated in the R.D. , draft note on clauses 2 and 3 that it is necessary to frame regulations regarding dry farming, contour ploughing, limitation of the areas under certain crops as for example cotton. These are substantial matters for which a provision can only be made in schemes. Vide section 4(1) (iv) and (v) of the Bombay Land Improvement Schemes Act, 1942. The matters which can be provided for in the proposed regulations must not only be supplementary but also incidental to a scheme as otherwise the scope of regulations would conflict with that of schemes under the Act, and regulations would nullify the procedural safeguards with which the Act restricts the making of schemes. Revised new section 10A has been framed accordingly

3. Clause 3: New section 12A.- Since under new section 10A contravention of a regulation is made an offence, the further reference to omitting to do anything in contravention of a regulation as an offence is redundant and hence omitted.

New section 12B.- R.D. draft section 12B has been split up into two separate sections 12B and 12C, since it appears from the notes in clauses that the provisions contained in sub-sections (3) to (10) of R.D. draft section 12B are additional provisions intended to apply only if the admission, herding, pasturing or retention of goats is prohibited in any area.

New section 12C.- The reference to neglect or otherwise in R.D. draft section 12B(ii) has been deleted as being unnecessary.

P.T.O.

New section 12C(i).- As the power under sub-section (1) of section 12B is discretionary with Government, the retention etc. of goats in any area would not be an offence, until an order is published in the Gazette under sub-section (1) of section 12B. Section 12C(1) has therefore been revised accordingly.

As goats are to be sent when seized to the Magistrate at the taluka headquarters under new section 12C(2), the pound-keeper is likely to incur expenditure not only on the feeding of goats but also on sending them. Provision has been made accordingly in new section 12C(2)(e) and 12C(6).

It is for the consideration of R.D. whether provision is not necessary on the lines of section 22 of the Cattle-trespass Act, 1871, providing for compensation for illegal seizure of goats.

4. Clause 4.- As section 15 of the Act already provides for amounts due under sections 11,12 and 14 being recovered as arrears of land revenue, the provision in R.D. draft section 25B, last paragraph, has been incorporated in a new clause 4 by adding section 25A to the sections mentioned in section 15.

5. New clause 5 makes consequently amendments in the rule making section 24(2).

6. Clause 6; sub-clause (i).- The reference to the Sir Cussow Wadia Trust has been omitted, as presumably it is not intended by such specific mention to categorise any particular class of trusts from which contributions may be made towards the costs of a scheme. Clause 6(i)(a), therefore, merely refers to any trust. The reference is however retained in the note on this clause.

Sub-clause (ii).- The provision contained in R.D, draft of new section 25A is more appropriate for insertion in section 25. It has therefore been embodied as a new sub-section (5) in that section in clause 6(ii).

7. Clause 7.- The provision contained in R.D draft of section 25B that the cost shall be recoverable from the owners in the proportion that the area of the land or the land revenue thereof bears to the total area or the land revenue of the land included in the scheme is indeterminate. Provision has therefore been made in new section 25A(1) in clause 7 that it shall be recovered in the proportion which the

area of the land or the land revenue in respect thereof bears to the total area of the land included in the scheme or as the case may be, the land revenue in respect thereof according as the Provincial Government may direct.

The second paragraph of R.D. draft section 25B provides that the instalments of the costs shall be recovered along with the land revenue. Under section 139 of the Bombay Land Revenue Code the land revenue is payable on the dates fixed under the provisions thereinafter contained and under rule 116 of the Land Revenue Rules, land revenue is payable in instalments on more than one date. Since the instalments of cost are to be recovered in the prescribed number of equated annual payments, it is presumed that the annual instalment is not to be split into sub-instalments, but that it is to be recoverable on the date appointed for the recovery of the first instalment of land revenue. Provision has accordingly been made in new section 25A(2) . R.D. may verify if this is suitable.

8. The subject matter of the Bill falls under entries 19, 20, 21 and 37 of the Provincial Legislative List and entry 2 of the Concurrent List. As the Bill does not contain any provision repugnment to any existing Indian law relaing to any matter in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act,1935, it is not necessary to reserve it for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act or paragraph (2) of the Proclamation. Under Executive Instructions the Bill requires the previous concurrence of the Governor General: Vide G.S.'s Memorandum No. 201(12), dated the 4th August 1941.

Sd/- P.N.M.
20/12.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9384, dated the 22nd December 1943.

4-Cs.

M.V.V.
13/7.

Office of the R.L.A.

In order to enable the R.L.A. to appreciate the phrase "or both" in R.D. clause 25A(1) at p.100, R.D. is requested to clarify how "area and assessment" of xland can together bear a proportion to total "area and assessment" of all lands under the scheme. To take an example, if a land has area 2 acres and assessment 10 rupees, and the total area is 30 acres and total assessment 200 rupees, the proportion of area to total area is 2:30; that of assessment to total assessment is 10:200; but inwhat is the proportion of "area and assessment" to "total area and assessment"? Alternatively the proportion may be what a specified authority shall fix, having regard to both area and assessemnt; if so the draft will need recasting.

2. As regards A on p.92, the objection of Deputy Secretary, R.D. is not understood, seeing that the expression "as the case may be" is similarly located in numerous enactments of the Parliament itself, such as sections 156, 172(1)(a),240(4), 242(4) Proviso (b) etc. of the Government of India Act, 1935.

3. R.D. draft clause 5(2) is unnecessary. The items need not necessarily be joined by "and" when there is simple enumeration, especially in a rule-making section;cf. section 2(2) of the Defence of India Act 1939 or section 84(2) of the Trade Marks Act, 1940, or section 33(3) of the Government of India Act, 1935. In recent years, the omission of "and" is preferred from the drafting point of view so that further items can be added if necessary without disturbing existing items. As for turning the fullstop into semicolon, no special amendment is necessary, as that is more a matter for the printing press than for statutory amendment. (See the last para. on p.39 of Maxwell's Interpretation of Statutes, Eighth Edition).

Sd/- P.M.M.
10/1/44.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 179, dated the 10th January 1944.

4-Cs/M.V.V./14.7

Office of the R.L.A.

There would be no objection to leaving the procedure on the lines of section 12 of the Tenancy Act to be prescribed by rules by suitably amending section 18 of th Land Improvement Schemes Act, 1942. It will of course not be possible to regulate by rules the court fees to be paid on applications and appeals on the lines of section 12(10) of the Court Fees Act, but R.D. does not perhaps desire to regulate those fees by rules. The object R.D. has in view may be achieved by amending section 18 of the Land Improvement Schemes Act by substituting the words "by an amount not exceeding that which may be fixed by such authority, and in accordance with such procedure", for the words "by such amount". A consequential change may be carried out in cl clause (vi) of sub-section (2) of section 24. That change would be the substitution of the clause by a new clause as follows, namely "(vi) the authority, procedure, and conditions which may be prescribed under section 18".

Sd/- P.N.M.
23/12/44.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1418, dated the 23rd February 1944.

4-Cs.

M.V.V.
14/7.

Office of the R.L.A.

(A) Where the Bombay Tenancy Act, 1939 applies, enhancement of rent is fully controlled and enablement is necessary to permit raising of the controlled rent because of the provision of section 12(9) of that Act. (B) Where the Bombay Tenancy Act does not apply, and where the tenant is not a permanent tenant entitled to hold it on fixed rent (i.e. under section 83 of the Bombay Land Revenue Code, 1879), landlords can raise rents for any reason whatever and even without giving any reasons so that enablement is unnecessary, but disablement is necessary to prevent raising of rents except under control. The draft of Secretary, R.D. on p.11 as repeated in para. 2 of his note on P. 16 is enabling but not disabling; it therefore covered (A) but not (B). To achieve the same object R.L.A. suggested revising section 18 on the lines indicated on p.13. The object now appears to be to provide for (B) as well, though this is narrowly stated in para. 1 of Secy. R.D.'s note on p.15 as having reference to case where enhancement of rent is sought on the sole ground of land improvement. Such narrowing will have no practical utility since in cases under (B) a landlord is under no obligation to state any ground for enhanceing rents. If a disabling provision for cases under (B) is intended, it must be general. (See 'A' of A(F)'s note p.1). To achieve this object, the draft in para. 3 of Secy. R.D.'s note on p.16 may be adopted as slightly amended below:-

Right of owner to enhance rent of land under Scheme.

"Notwithstanding anything contained in any other law for the time being in force, or any usage or agreement or decree or order of Court of Law, it shall not be lawful for the owner of any land included in a scheme to enhance the rent payable by a tenant of the land by an amount exceeding that fixed time to time by such authority and in accordance with such procedure and subject to such conditions as may be prescribed." The result of this will be that all lands under the scheme will be controlled under this provision exclusively in respect of enhancement of rents and will be taken out of the Tenancy Act should that Act apply to the land. The rules under this proposed section may however place the owner in the same position as he would have been in under

P.T.O.

the Tenancy Act by prescribing the Authorities and procedure as under section 12 of the latter Act.

2. Presumably the consequential amendment of section 24(2) (vi), as suggested by the R.L.A. in his No. 1418, dated 23rd February 1944 at p.14 will be duly carried out, the necessary notes in the statement to the Bill will be inserted and the previous concurrence of the Governor-General to the proposed amendments will be duly obtained by R.D.

Sd/ - P.N.N.
3.3.44.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1707, dated the 4th March 1944.

4-Cs.

M.V.V.
14/7.

Immediate.

No.2310,
Legal Department,
Bombay Castle, 27th March 1944.

From

P.N.Moos, Esquire, Bar-at-Law, I.C.S.
Secretary to the Government of Bombay;

To

The Secretary to the Governor of Bombay.

Subject:- A Bill to amend the Land Improvement Schemes Act, 1942.

Sir,

With reference to your memorandum No.201(99) dated the 16th February 1944, addressed to the Revenue Department on the above subject, I am directed to forward herewith for the assent of His Excellency the Governor a copy of the Bill to amend the Bombay Land Improvement Schemes Act, 1942, prepared by His Excellency the Governor under paragraph (2) of the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935, or falls within the purview of clause (a),(b),(c) or (d) of paragraph XVII of the Instrument of Instructions to the Governo of Bombay.

3. The subject-matter of the Bill falls under entries 19,20,21 and 37 of the Provincial Legislative List and entry 2 of the Concurren List. As the Bill does not contain any provision repugnant to any existing Indian Law relating to any matter in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act,1935,it is not necessary to reserve it for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act or paragraph (2) of the Proclamation.

4. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

P.T.O.

5. It is requested that the assessment of His Excellency the Governor to the Bill may be obtained so as to enable this Department to publish the assent before 31st March 1944.

6. I also forward herewith one spare copy of the Bill.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/- P.N.M.
29/3/44.

Secretary to the Government of Bombay,
Legal Department.

Through

The Secretary to the Government of Bombay,
Revenue Department.

4-Ca.

M.V.V.
14/7.

IMMEDIATE

No. 201(99).
Office of the Governor's Secretary,
Government House,
Bombay, 28th March 1944.

From

D. Symington, Esquire, CIE.ICS.,
Secretary to the Governor of Bombay,

To,

The Secretary to Government,
Legal Department, Bombay,

Subject:- The Bombay Land Improvemnet Schemes (Amendment) Bill, 1944.

Sir,

With reference to your letter No. 2310,dated the 27th March 1944, on the above subject, I am directed to return herewith the copy of the th Bombay Land Improvement Schemes (Amendment) Bill, 1944, prepared by His Excellency the Governor under paragraph (2) of the Proclamation , dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, and to state that under the xprovisions of the aforesaid paragraph His Excellency the Governor is pleased to declare that he assents to the Bill in the name of His Majesty.

Yours obedient servant,

-d/-

Secretary to the Governor of Bombay.

4-Cs.
M.V.V.
14/7.

Acts.

Publication of the Bombay Land Improvement Schemes (Amendment)Act,1944.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 2377.
Bombay Castle, 29th March 1944.

Letter to the Secretary to the Governor, No.2310,dated the 27th March 1944.

Letter from the Secretary to the Governor,No.201(99), dated the 28th March 1944.

"With reference to your letter No.2310,dated the 27th March 1944, on the above subject, I am directed to return herewith the copy of the Bombay Land Improvement Schemes (Amendment) Bill, 1944, prepared by His Excellency the Governor under paragraph (2) of the Proclamation, dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, and to state that under the provisions of the aforesaid paragraph His Excellency the Governor is pleased to declare that he assents to the Bill in the name of His Majesty."

RESOLUTION.- The law should be published as Bombay Act No.III of 1944, in the Bombay Government Gazette dated the 29th March 1944.

2. The Act should be translated into Marathi,Gujarathi,Kannada and Hindustani (in Urdu and Devnagari script) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department.

By order of the Governor of Bombay,

Sd/- S.L.CHAUDHARI,

For P.N.MOOS,
Secretary to Government.

To

The Manager, Government Central Press, Bombay, (with a copy of the Act and with a request that 15 gazette copies of the Act may be forwarded to the Legal Department).
The Revenue Department,
The Oriental Translator to Government,
The Secretary to the Bombay Legislative Assembly,
The Secretary to the Bombay Legislative Council.
) a with/copy of the Act.

* with five extra copies.

4-Cs/M.V.V./14.7

Registered No. B-1

The Bombay Government Gazette

PUBLISHED BY AUTHORITY

WEDNESDAY, 29TH MARCH 1944.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General.

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The following Act made by the Governor of Bombay in exercise of the powers vested in him by virtue of the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935, having been assented to by him on the 28th March 1944 is hereby published for general information.

P. N. MOOS,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. III OF 1944.

(First published, after having received the assent of the Governor in the "Bombay Government Gazette" on the 29th March 1944.)

An Act to amend the Bombay Land Improvement Schemes Act, 1942.

WHEREAS it is expedient to amend the Bombay Land Improvement Schemes Act, 1942, for the purposes hereinafter appearing;

Bom. XXVIII of 1942.

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation, dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature;

26 Geo. 6, Ch. 2.

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act :—

Short title.

1. This Act may be called the Bombay Land Improvement Schemes (Amendment) Act, 1944.

Insertion of new section 10A in Bom. XXVIII of 1942.

2. In Chapter II of the Bombay Land Improvement Schemes Act, 1942, hereinafter called the said Act, after section 10, the following new section shall be inserted namely :— Bom. XXVIII of 1942.

Power of Board to make regulations.

"10A. For the purpose of carrying out the objects of a scheme which has come into force under section 10, the Board may make regulations requiring any person or class of persons or the public generally to take certain action or to refrain from doing certain acts in respect of any matters supplementary and incidental to the scheme.

Insertion of new section 12A in Bom. XXVIII of 1942.

3. In Chapter III of the said Act, after section 12, the following new section shall be inserted, namely :—

Penalty.

"12A. Any person who contravenes or causes any contravention of, any of the provisions of a scheme which has come into force under section 10, or any of the regulations made under section 10A, or does any act which causes damage to any of the works carried out under the scheme, or fails to fulfil any liability imposed upon him under section 13 or sub-section (5) of section 25 shall, on conviction, be punishable with fine which may extend to fifty rupees or with simple imprisonment for a period which may extend to one month, or with both.'

Amendment of section 15 of Bom. XXVIII of 1942.

4. In section 15 of the said Act, for the word and figures "and 14" the figures, word and letter "14 and 25A" shall be substituted.

Amendment of section 24 of Bom. XXVIII of 1942.

5. In sub-section (2) of section 24 of the said Act

(1) in clause (*vi*) the word "and" at the end shall be deleted, and

(2) after clause (*vii*) the following shall be inserted, namely :—

"(*viii*) the number of equated annual instalments payable under sub-section (2) of section 25A".

Amendment of section 25 of Bom. XXVIII of 1942.

6. In section 25 of the said Act—

(i) in sub-section (1)—

(*a*) after the figure "4" the following shall be inserted, namely :—

"in any case in which the Provincial Government or any trust may contribute not less than 25 per cent. of the cost of the scheme, or" and

(*b*) the following shall be added at the end, namely :—

"or land improvement is necessary in the interests of any members of His Majesty's forces, whether in service or retired, or of their dependents".

(ii) to the said section the following new sub-section shall be added, namely :—

"(*5*) Notwithstanding anything contained in sub-section (*4*), the owner of the land on which any work or part of work has been carried out for the purposes of a scheme under this section shall be liable, pending the preparation of the record of rights and liabilities under section 13, to maintain the work or part of the work as the case may be to the satisfaction of the Collector and also to repair it to his satisfaction within such time as he may fix :

Provided that if, in the opinion of the Collector, the owner of any other land should share such liability, the Collector may by order in writing so direct and thereupon the liability shall be shared accordingly.

The provisions of sub-section (*2*) and (*3*) of section 14 shall apply in respect of the liability under this sub-section."

Insertion of new section 25A in Bom. XXVIII of 1942.

7. After section 25 of the said Act, the following new section shall be inserted, namely :—

Provincial Government may carry out works in a scheme and subsequently recover cost from owners of lands.

"25A. (*1*) Notwithstanding anything contained in sections 8 and 11, the Provincial Government may, in the case of any scheme which has come into force under section 10, direct that the work under the scheme to be carried out by the owners of the lands shall be carried out by the Provincial Government and that the cost of such work shall be recovered from the owners of the lands included in the scheme in such proportion as the Provincial Government may fix having regard to the area or assessment or both of the lands of such owners included in the scheme.

(*2*) The cost directed to be recovered under sub-section (*1*), with interest at such rate as the Provincial Government may direct, shall be recoverable from the owners concerned in such number of equated annual instalments payable on the date appointed for the payment of the first instalment of land revenue as may be prescribed."

STATEMENT.

The objects of the Act are explained in the following notes on clauses :-

NOTES ON CLAUSES.

Clause 2.—Experience of land improvement gained so far shows that it will be necessary for the Board to make and enforce regulations regarding matters supplementary and incidental to a scheme if the maximum benefit is to be derived from the land improvement works executed and they are to be maintained in good order. It is therefore necessary to give power to the Boards to make such regulations to carry out the objects of the scheme. New section 10A is intended to secure this object.

Clause 3 New section 12A.—The works executed under the Land Improvement Schemes Act have to be maintained and repaired by the owners of lands on whom the obligation to do so is thrown by the record of rights and liabilities prepared under section 13 ; and section 14 provides for the maintenance and repair of such works by any person authorised by the Collector in case of the failure of the owners of lands to carry out their obligations and for recovery of the cost of such maintenance and repairs. It is, however, necessary to prescribe a penalty in addition to the liability for the cost imposed under section 14 (*3*), so that cases of failure to maintain and repair the works should be as few as possible. New section 12A is intended to carry out this object and to provide the necessary sanction for enforcement of the regulations made under section 10A.

Clause 4.—Amendment of section 15 is consequential to new section 25A, and enables recovery of the unpaid instalments of the cost of the scheme, carried out by the Provincial Government, as arrears of land revenue.

Clause 5.—This clause carries out consequential amendments in section 24.

Clause 6 Sub-clause (i).—Sub-section (*1*) of section 25 empowers the Provincial Government to direct the preparation of a land improvement scheme in any area in which a state of famine or scarcity prevails or in which a state of famine or scarcity is likely to prevail. The object of the proposed amendment in sub-clause (*i*) is to extend the scope of this sub-section to cover schemes subsidised by the Provincial Government or by any trust, as for instance, the Sir Cusrow Wadia Trust and schemes necessary in the interest of members of His Majesty's forces, either serving or retired and of their dependents.

Sub-clause (ii).—There may be a time-lag between the execution of the land improvement schemes under section 25 and the preparation of the record of rights and liabilities under section 13 and it is necessary to provide for the maintenance and repairs of the work done pending the preparation of the latter. The proposed sub-section (*5*) is intended to secure this object.

Clause 7.—Experience has shown that the procedure prescribed under section 11 for execution of a scheme is suitable only in the case of small isolated schemes and that the expeditious execution of large land improvement schemes covering extensive areas is only possible if their execution is carried out at Government cost in the first instance. It is therefore necessary to provide for the recovery of the land-owner's share of the cost by annual equated instalments over a fixed period of years and the proposed section 25A is intended to secure this object.

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